



UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER OF PATENTS

September 13, 2004

Dale B. Halling
Law office of Dale B. Halling
24 S. Weber St., Suite 311
Colorado Springs, CO 80903

In re application of:
Bossemeyer
No: 09/742,274
Filed: March 23, 2001
For: Speech Reference Enrollment Method

In response to the petition received on July 8, 2003 and August 4, 2003, to withdraw the holding of abandonment in the in the above application.

The above-identified application became abandoned for failure to reply with the meaning of 37 C.F.R. 1.113 in a timely manner to the Notice to File Missing Parts of Nonprovisional Application mailed May 4, 2001. Which set a shortened statutory period for reply of two (2) months. Accordingly, this application became abandoned July 6, 2001. The notice of abandonment was mailed July 7, 2003.

The petition is hereby Denied.

On July 8, 2003 and August 4, 2003, the office received two Petitions from The Law Office of Dale B. Halling, attorney registration number 38,170. In reviewing the application Dale B. Halling was registered in the application but all correspondence was designated to Bruce Stuckman at SBC Technology Resources, Inc: 9505 Arboretum Blvd., 9th Floor, Austin, TX 78759. The Notice to File Missing Parts issued on May 4, 2001 was sent to the designated address in Austin, TX.

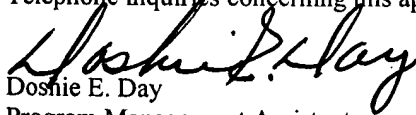
The office has not received any correspondence from Bruce Stuckman at SBC Technology Resources. All correspondence pertaining to the application has come from The Law Office of Dale B. Halling.

In the petition counsel states that Bruce Stuckman did not receive the Notice to File Missing Parts. The evidence submitted is not sufficient to establish that Bruce Stuckman did not receive the Notice to File Missing Parts. Counsel must supply the office with proof from Mr. Stuckman showing he did not receive the Notice to File Missing Parts mailed May 4, 2001.

All correspondence will be designated to the The Law Office of Dale B. Halling at 24 S. Weber, Suite 311, Colorado Springs, CO 80903. As requested in the petition received July 8, 2003.

Counsel is given two months from the date of this notice to submit proof of evidence that Bruce Stuckman did not received the Notice to File Missing Parts mailed May 4, 2001.

Telephone inquiries concerning this application may be directed to Doshie E. Day (703) 308-3640.


Doshie E. Day
Program Management Assistant
Office of Initial Patent Examination

Enclosure: 1

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Withdrawing the Holding of Abandonment
When Office Actions Are Not Received

The purpose of this notice is to announce a practice that will minimize costs and burdens to the practitioner and the Office when an application has become abandoned due to a failure to receive an Office action.

A petition to withdraw the holding of abandonment in accordance with *Delgar Inc. v. Schuyler*, 172 USPQ 513 (D.D.C. 1971) is burdensome to the practitioner since the practitioner must overcome a strong presumption that an Office action duly addressed and indicated as mailed was timely delivered to the addressee. To overcome this presumption, a practitioner is currently required to submit a persuasive showing that would permit the Office to conclude that the Office action was not received. Accordingly, evidence which is typically required includes: copies of records which would disclose the receipt of other correspondence mailed from the Patent and Trademark Office on or about the mail date of the non-received Office action, but fail to disclose receipt of the Office action mailed that date; copies of records on which the Office action would have been entered had it been received (e.g., a copy of the outside of the file jacket maintained by the practitioner); and verified statements from persons who would have handled the Office action (e.g., mail clerks, docket clerks, secretary, etc.).

In order to minimize costs and burdens to the practitioner and the Office when an application has become abandoned due to a failure to receive an Office action, the Office is modifying the showing required to make a petition to withdraw the holding of abandonment grantable. The showing required to establish the failure to receive an Office action must consist of a statement from the practitioner stating that the Office action was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office action was not received. A copy of the docket record where the non-received Office action would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.

The showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the Office action may have been lost after receipt rather than a conclusion that the Office action was lost in the mail, e.g., if the practitioner has a history of not receiving Office actions. Two additional procedures are available for reviving an application that has become abandoned due a failure to respond to an Office Action: (1) a petition based on unintentional abandonment or delay; and (2) a petition based on unavoidable delay. See Manual of Patent Examining Procedure 711.03(c).

Oct. 25, 1993

CHARLES E. VAN HORN
Patent Policy and Projects Administrator
Office of the Assistant Commissioner
for Patents

[1156 OG 53]